

GUARDIANSHIP AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill creates the Utah Protective Proceedings Act within the Probate Code.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a method within the courts for the appointment of a guardian or conservator for a minor or an incapacitated adult;
- ▶ eliminates a local school board's ability to designate guardians for students within their district;
- ▶ eliminates expedited guardianship proceedings for residents of the Utah State Developmental Center; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:**AMENDS:**

- 53A-2-202**, as last amended by Laws of Utah 1998, Chapter 263
- 53A-2-203.5**, as enacted by Laws of Utah 1998, Chapter 124
- 75-1-201**, as last amended by Laws of Utah 2010, Chapter 93
- 75-1-401**, as last amended by Laws of Utah 2010, Chapter 90
- 75-5-501**, as last amended by Laws of Utah 2003, Chapter 241
- 75-5b-102**, as enacted by Laws of Utah 2008, Chapter 253
- 75-5b-302**, as enacted by Laws of Utah 2008, Chapter 253
- 78B-5-804**, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

33 **75-5c-101**, Utah Code Annotated 1953
34 **75-5c-102**, Utah Code Annotated 1953
35 **75-5c-103**, Utah Code Annotated 1953
36 **75-5c-104**, Utah Code Annotated 1953
37 **75-5c-105**, Utah Code Annotated 1953
38 **75-5c-106**, Utah Code Annotated 1953
39 **75-5c-107**, Utah Code Annotated 1953
40 **75-5c-108**, Utah Code Annotated 1953
41 **75-5c-109**, Utah Code Annotated 1953
42 **75-5c-110**, Utah Code Annotated 1953
43 **75-5c-111**, Utah Code Annotated 1953
44 **75-5c-112**, Utah Code Annotated 1953
45 **75-5c-113**, Utah Code Annotated 1953
46 **75-5c-114**, Utah Code Annotated 1953
47 **75-5c-115**, Utah Code Annotated 1953
48 **75-5c-116**, Utah Code Annotated 1953
49 **75-5c-117**, Utah Code Annotated 1953
50 **75-5c-118**, Utah Code Annotated 1953
51 **75-5c-119**, Utah Code Annotated 1953
52 **75-5c-120**, Utah Code Annotated 1953
53 **75-5c-121**, Utah Code Annotated 1953
54 **75-5c-122**, Utah Code Annotated 1953
55 **75-5c-123**, Utah Code Annotated 1953
56 **75-5c-201**, Utah Code Annotated 1953
57 **75-5c-202**, Utah Code Annotated 1953
58 **75-5c-203**, Utah Code Annotated 1953
59 **75-5c-204**, Utah Code Annotated 1953
60 **75-5c-301**, Utah Code Annotated 1953
61 **75-5c-302**, Utah Code Annotated 1953
62 **75-5c-303**, Utah Code Annotated 1953
63 **75-5c-304**, Utah Code Annotated 1953

64 **75-5c-305**, Utah Code Annotated 1953
65 **75-5c-306**, Utah Code Annotated 1953
66 **75-5c-307**, Utah Code Annotated 1953
67 **75-5c-308**, Utah Code Annotated 1953
68 **75-5c-401**, Utah Code Annotated 1953
69 **75-5c-402**, Utah Code Annotated 1953
70 **75-5c-403**, Utah Code Annotated 1953
71 **75-5c-404**, Utah Code Annotated 1953
72 **75-5c-405**, Utah Code Annotated 1953
73 **75-5c-406**, Utah Code Annotated 1953
74 **75-5c-407**, Utah Code Annotated 1953
75 **75-5c-408**, Utah Code Annotated 1953
76 **75-5c-409**, Utah Code Annotated 1953
77 **75-5c-410**, Utah Code Annotated 1953
78 **75-5c-411**, Utah Code Annotated 1953
79 **75-5c-412**, Utah Code Annotated 1953
80 **75-5c-413**, Utah Code Annotated 1953
81 **75-5c-414**, Utah Code Annotated 1953
82 **75-5c-415**, Utah Code Annotated 1953
83 **75-5c-416**, Utah Code Annotated 1953
84 **75-5c-417**, Utah Code Annotated 1953
85 **75-5c-418**, Utah Code Annotated 1953
86 **75-5c-419**, Utah Code Annotated 1953
87 **75-5c-420**, Utah Code Annotated 1953
88 **75-5c-421**, Utah Code Annotated 1953

89 RENUMBERS AND AMENDS:

90 **75-5c-309**, (Renumbered from 75-5-314, as enacted by Laws of Utah 1975, Chapter
91 150)
92 **75-5c-310**, (Renumbered from 75-5-315, as enacted by Laws of Utah 1975, Chapter
93 150)

94 REPEALS:

- 95 **75-5-101**, as enacted by Laws of Utah 1975, Chapter 150
- 96 **75-5-102**, as last amended by Laws of Utah 2004, Chapter 198
- 97 **75-5-103**, as enacted by Laws of Utah 1975, Chapter 150
- 98 **75-5-104**, as enacted by Laws of Utah 1975, Chapter 150
- 99 **75-5-105**, as enacted by Laws of Utah 1975, Chapter 150
- 100 **75-5-201**, as last amended by Laws of Utah 1998, Chapter 124
- 101 **75-5-202**, as last amended by Laws of Utah 1985, Chapter 41
- 102 **75-5-202.5**, as enacted by Laws of Utah 1985, Chapter 41
- 103 **75-5-203**, as last amended by Laws of Utah 1985, Chapter 41
- 104 **75-5-204**, as last amended by Laws of Utah 1985, Chapter 41
- 105 **75-5-205**, as enacted by Laws of Utah 1975, Chapter 150
- 106 **75-5-206**, as last amended by Laws of Utah 2010, Chapter 392
- 107 **75-5-207**, as last amended by Laws of Utah 1995, Chapter 156
- 108 **75-5-208**, as last amended by Laws of Utah 1985, Chapter 41
- 109 **75-5-209**, as last amended by Laws of Utah 2008, Chapter 3
- 110 **75-5-210**, as enacted by Laws of Utah 1975, Chapter 150
- 111 **75-5-211**, as last amended by Laws of Utah 1985, Chapter 41
- 112 **75-5-212**, as enacted by Laws of Utah 1975, Chapter 150
- 113 **75-5-301**, as last amended by Laws of Utah 1985, Chapter 41
- 114 **75-5-302**, as enacted by Laws of Utah 1975, Chapter 150
- 115 **75-5-303**, as last amended by Laws of Utah 1988, Chapter 104
- 116 **75-5-304**, as last amended by Laws of Utah 1988, Chapter 104
- 117 **75-5-305**, as last amended by Laws of Utah 1977, Chapter 194
- 118 **75-5-306**, as last amended by Laws of Utah 1977, Chapter 194
- 119 **75-5-307**, as last amended by Laws of Utah 1988, Chapter 104
- 120 **75-5-308**, as enacted by Laws of Utah 1975, Chapter 150
- 121 **75-5-309**, as last amended by Laws of Utah 1988, Chapter 104
- 122 **75-5-310**, as last amended by Laws of Utah 1979, Chapter 244
- 123 **75-5-311**, as last amended by Laws of Utah 1998, Chapter 288
- 124 **75-5-312**, as last amended by Laws of Utah 1992, Chapter 290

125 **75-5-313**, as last amended by Laws of Utah 1985, Chapter 41
126 **75-5-316**, as last amended by Laws of Utah 2001, Chapter 73
127 **75-5-401**, as last amended by Laws of Utah 2001, Chapter 375
128 **75-5-402**, as last amended by Laws of Utah 1992, Chapter 30
129 **75-5-403**, as last amended by Laws of Utah 1992, Chapter 30
130 **75-5-404**, as enacted by Laws of Utah 1975, Chapter 150
131 **75-5-405**, as enacted by Laws of Utah 1975, Chapter 150
132 **75-5-406**, as enacted by Laws of Utah 1975, Chapter 150
133 **75-5-407**, as enacted by Laws of Utah 1975, Chapter 150
134 **75-5-408**, as enacted by Laws of Utah 1975, Chapter 150
135 **75-5-409**, as last amended by Laws of Utah 1977, Chapter 194
136 **75-5-410**, as last amended by Laws of Utah 2010, Chapter 324
137 **75-5-411**, as last amended by Laws of Utah 1977, Chapter 194
138 **75-5-412**, as enacted by Laws of Utah 1975, Chapter 150
139 **75-5-413**, as enacted by Laws of Utah 1975, Chapter 150
140 **75-5-414**, as enacted by Laws of Utah 1975, Chapter 150
141 **75-5-415**, as enacted by Laws of Utah 1975, Chapter 150
142 **75-5-416**, as enacted by Laws of Utah 1975, Chapter 150
143 **75-5-417**, as last amended by Laws of Utah 2004, Chapter 89
144 **75-5-418**, as enacted by Laws of Utah 1975, Chapter 150
145 **75-5-419**, as enacted by Laws of Utah 1975, Chapter 150
146 **75-5-420**, as last amended by Laws of Utah 1977, Chapter 194
147 **75-5-421**, as enacted by Laws of Utah 1975, Chapter 150
148 **75-5-422**, as enacted by Laws of Utah 1975, Chapter 150
149 **75-5-423**, as enacted by Laws of Utah 1975, Chapter 150
150 **75-5-424**, as last amended by Laws of Utah 1977, Chapter 194
151 **75-5-425**, as last amended by Laws of Utah 1977, Chapter 194
152 **75-5-426**, as enacted by Laws of Utah 1975, Chapter 150
153 **75-5-427**, as last amended by Laws of Utah 1977, Chapter 194
154 **75-5-428**, as last amended by Laws of Utah 2007, Chapter 306

155 **75-5-429**, as enacted by Laws of Utah 1975, Chapter 150
156 **75-5-430**, as enacted by Laws of Utah 1975, Chapter 150
157 **75-5-431**, as enacted by Laws of Utah 1975, Chapter 150
158 **75-5-432**, as last amended by Laws of Utah 1977, Chapter 194
159 **75-5-433**, as last amended by Laws of Utah 1977, Chapter 194

160

161 *Be it enacted by the Legislature of the state of Utah:*

162 Section 1. Section **53A-2-202** is amended to read:

163 **53A-2-202. Guardianship for residency purposes by responsible adult --**

164 **Procedure to obtain -- Termination.**

165 (1) For purposes of this part, "responsible adult" means a person 21 years of age or
166 older who is a resident of this state and is willing and able to provide reasonably adequate food,
167 clothing, shelter, and supervision for a minor child.

168 (2) A local board of education may [~~adopt a policy permitting it to~~] designate a
169 responsible adult residing in the school district as legal guardian of a child whose custodial
170 parent or legal guardian does not reside within the state upon compliance with the following
171 requirements:

172 (a) submission to the school district of a signed and notarized affidavit by the child's
173 custodial parent or legal guardian stating that:

174 (i) the child's presence in the district is not for the primary purpose of attending the
175 public schools;

176 (ii) the child's physical, mental, moral, or emotional health would best be served by a
177 transfer of guardianship to the Utah resident;

178 (iii) the affiant is aware that designation of a guardian under this section is equivalent
179 to a court-ordered guardianship under [~~Section 75-5-206~~] Title 75, Chapter 5c, Part 2,
180 Appointment of a Guardian for a Minor, and will suspend or terminate any existing parental or
181 guardianship rights in the same manner as would occur under a court-ordered guardianship;

182 (iv) the affiant consents and submits to any such suspension or termination of parental
183 or guardianship rights;

184 ~~[(v) the affiant consents and submits to the jurisdiction of the state district court in~~
185 ~~which the school district is located in any action relating to the guardianship or custody of the~~

186 ~~child in question;~~

187 ~~[(vi)]~~ (v) the affiant designates a named responsible adult as agent, authorized to accept
188 service on behalf of the affiant of any process, notice, or demand required or permitted to be
189 ~~[served in connection with any action under Subsection (2)(a)(v)]~~; and

190 ~~[(vii)]~~ (vi) it is the affiant's intent that the child become a permanent resident of the
191 state and reside with and be under the supervision of the named responsible adult;

192 (b) submission to the school district of a signed and notarized affidavit by the
193 responsible adult stating that:

194 (i) the affiant is a resident of the school district and desires to become the guardian of
195 the child;

196 ~~[(ii) the affiant consents and submits to the jurisdiction of the state district court in~~
197 ~~which the school district is located in any action relating to the guardianship or custody of the~~
198 ~~child in question;~~

199 ~~[(iii)]~~ (ii) the affiant will accept the responsibilities of guardianship for the duration,
200 including the responsibility to provide adequate supervision, discipline, food, shelter,
201 educational and emotional support, and medical care for the child if designated as the child's
202 guardian; and

203 ~~[(iv)]~~ (iii) the affiant accepts the designation as agent under Subsection (2)(a)~~[(vi)]~~(v);

204 (c) submission to the school district of a signed and notarized affidavit by the child
205 stating that:

206 (i) the child desires to become a permanent resident of Utah and reside with and be
207 responsible to the named responsible adult; and

208 (ii) the child will abide by all applicable rules of any public school which the child may
209 attend after guardianship is awarded; and

210 (d) if the child's custodial parent or legal guardian cannot be found in order to execute
211 the statement required under Subsection (2)(a), the responsible adult must submit an affidavit
212 to that effect to the district. The district shall also submit a copy of the statement to the
213 Criminal Investigations and Technical Services Division of the Department of Public Safety,
214 established in Section 53-10-103.

215 (3) The district may require the responsible adult, in addition to the documents set forth
216 in Subsection (2), to also submit any other documents which are relevant to the appointment of

a guardian of a minor or which the district reasonably believes to be necessary in connection with a given application to substantiate any claim or assertion made in connection with the application for guardianship.

(4) Upon receipt of the information and documentation required under Subsections (2) and (3), and a determination by the board that the information is accurate, that the requirements of this section have been met, and that the interests of the child would best be served by granting the requested guardianship, the school board ~~[or its authorized representative]~~ may designate the applicant as guardian of the child by issuing a designation of guardianship letter to the applicant.

(5) (a) ~~[If a local school board has adopted a policy permitting the board to designate a guardian under this section, a denial]~~ Denial of an application for appointment of a guardian may be appealed to the district court in which the school district is located.

(b) The court shall uphold the decision of the board unless it finds, by clear and convincing evidence, that the board's decision was arbitrary and capricious.

~~[(c) An applicant may, rather than appealing the board's decision under Subsection (5)(b), file an original Petition for Appointment of Guardian with the district court, which action shall proceed as if no decision had been made by the school board.]~~

(6) A responsible adult obtaining guardianship under this section has the same rights, authority, and responsibilities as a guardian appointed under ~~[Section 75-5-20]~~ Title 75, Chapter 5c, Part 2, Appointment of a Guardian for a Minor.

~~[(7)(a) The school district shall deliver the original documents filed with the school district, together with a copy of the designation of guardianship issued by the district, in person or by any form of mail requiring a signed receipt, to the clerk of the state district court in which the school district is located.]~~

~~[(b) The court may not charge the school district a fee for filing guardianship papers under this section.]~~

~~[(8)(a)]~~ (7) The authority and responsibility of a custodial parent or legal guardian submitting an affidavit under this section may be restored by the district, and the guardianship obtained under this section terminated by the district:

~~[(i)]~~ (a) upon submission to the school district in which the guardianship was obtained of a signed and notarized statement by the person who consented to guardianship under

248 Subsection (2)(a) requesting termination of the guardianship; or

249 ~~[(ii)]~~ (b) by the person accepting guardianship under Subsection (2)(b) requesting the
250 termination of the guardianship.

251 ~~[(b) If the school district determines that it would not be in the best interests of the~~
252 ~~child to terminate the guardianship, the district may refer the request for termination to the state~~
253 ~~district court in which the documents were filed under Subsection (5) for further action~~
254 ~~consistent with the interests of the child.]~~

255 ~~[(9)]~~ (8) The school district shall retain copies of all documents required by this section
256 until the child in question has reached the age of 18 unless directed to surrender the documents
257 by a court of competent jurisdiction.

258 ~~[(10)]~~ (9) (a) Intentional submission to a school district of fraudulent or misleading
259 information under this part is punishable under Section 76-8-504.

260 (b) A school district which has reason to believe that a party has intentionally
261 submitted false or misleading information under this part may, after notice and opportunity for
262 the party to respond to the allegation:

263 (i) void any guardianship, authorization, or action which was based upon the false or
264 misleading information; and

265 (ii) recover, from the party submitting the information, the full cost of any benefits
266 received by the child on the basis of the false or misleading information, including tuition, fees,
267 and other unpaid school charges, together with any related costs of recovery.

268 (c) A student whose guardianship or enrollment has been terminated under this section
269 may, upon payment of all applicable tuition and fees, continue in enrollment until the end of
270 the school year unless excluded from attendance for cause.

271 Section 2. Section **53A-2-203.5** is amended to read:

272 **53A-2-203.5. Recognition of guardianship.**

273 (1) A document issued by other than a court of law which purports to award
274 guardianship to a person who is not a legal resident of the jurisdiction in which the
275 guardianship is awarded is not valid in ~~[the]~~ this state ~~[of Utah]~~ until reviewed and approved by
276 a ~~[Utah]~~ court in this state.

277 (2) The procedure for obtaining approval under Subsection (1) is the procedure
278 required under Title 75, Chapter ~~[5]~~ 5c, Part 2, ~~[for obtaining a court appointment of a~~

guardian] Appointment of a Guardian for a Minor.

Section 3. Section **75-1-201** is amended to read:

75-1-201. General definitions.

Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in this code:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

(5) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) "Claims," in respect to estates of decedents and protected persons, includes

liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

"Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(8) "Court" means any of the courts of record in this state having jurisdiction in matters relating to the affairs of decedents.

(9) "Descendant" of an individual means all of his descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. For the purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.

~~[(12) "Disability" means cause for a protective order as described by Section 75-5-401.]~~

~~[(13)]~~ (12) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

~~[(14)]~~ (13) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.

341 [(15)] (14) "Exempt property" means that property of a decedent's estate which is
342 described in Section 75-2-403.

343 [(16)] (15) "Fiduciary" includes a personal representative, guardian, conservator, and
344 trustee.

345 [(17)] (16) "Foreign personal representative" means a personal representative of
346 another jurisdiction.

347 [(18)] (17) "Formal proceedings" means proceedings conducted before a judge with
348 notice to interested persons.

349 [(19)] (18) "Governing instrument" means a deed, will, trust, insurance or annuity
350 policy, account with POD designation, security registered in beneficiary form (TOD), pension,
351 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of
352 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of
353 any similar type.

354 [(20)] (19) "Guardian" means a person who has qualified as a guardian of a minor or
355 incapacitated person pursuant to testamentary or court appointment, or by written instrument as
356 provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

357 [(21)] (20) "Heirs," except as controlled by Section 75-2-711, means persons, including
358 the surviving spouse and state, who are entitled under the statutes of intestate succession to the
359 property of a decedent.

360 [(22)] "~~Incapacitated person~~" ~~means any person who is impaired by reason of mental~~
361 ~~illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic~~
362 ~~intoxication, or other cause, except minority, to the extent of lacking sufficient understanding~~
363 ~~or capacity to make or communicate responsible decisions.]~~

364 (21) "Incapacity," which is measured by functional limitations, means a judicial
365 determination after proof by clear and convincing evidence that an adult's ability to do any of
366 the following is so impaired that illness or physical or financial harm may occur:

367 (a) receive and evaluate information;

368 (b) make and communicate decisions;

369 (c) provide for necessities such as food, shelter, clothing, health care, or safety; or

370 (d) manage property.

371 [(23)] (22) "Informal proceedings" mean those conducted without notice to interested

persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

~~[(24)]~~ (23) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent~~[, ward,~~ or protected person. It also includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

~~[(25)]~~ (24) "Issue" of a person means descendant as defined in Subsection (9).

~~[(26)]~~ (25) "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~[(27)]~~ (26) "Lease" includes an oil, gas, or other mineral lease.

~~[(28)]~~ (27) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~[(29)]~~ (28) "Minor" means a person who is under 18 years of age.

~~[(30)]~~ (29) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

~~[(31)]~~ (30) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

~~[(32)]~~ (31) "Organization" includes a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

~~[(33)]~~ (32) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

403 [(34)] (33) "Payor" means a trustee, insurer, business entity, employer, government,
404 governmental agency or subdivision, or any other person authorized or obligated by law or a
405 governing instrument to make payments.

406 [(35)] (34) "Person" means an individual or an organization.

407 [(36)] (35) (a) "Personal representative" includes executor, administrator, successor
408 personal representative, special administrator, and persons who perform substantially the same
409 function under the law governing their status.

410 (b) "General personal representative" excludes special administrator.

411 [(37)] (36) "Petition" means a written request to the court for an order after notice.

412 [(38)] (37) "Proceeding" includes action at law and suit in equity.

413 [(39)] (38) "Property" includes both real and personal property or any interest therein
414 and means anything that may be the subject of ownership.

415 [(40)] (39) "Protected person" means a person for whom a guardian or a conservator
416 has been appointed[. ~~A "minor protected person" means a minor for whom a conservator has~~
417 ~~been appointed because of minority~~] or a protective order entered, including a minor.

418 [(41)] (40) "Protective proceeding" means a proceeding [~~described in Section~~
419 ~~75-5-401~~] under Title 75, Chapter 5c, Utah Protective Proceedings Act.

420 [(42)] (41) "Record" means information that is inscribed on a tangible medium or that
421 is stored in an electronic or other medium and is retrievable in perceivable form.

422 [(43)] (42) "Registrar" refers to the official of the court designated to perform the
423 functions of registrar as provided in Section 75-1-307.

424 [(44)] (43) "Security" includes any note, stock, treasury stock, bond, debenture,
425 evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or
426 lease or in payments out of production under such a title or lease, collateral trust certificate,
427 transferable share, voting trust certificate, and, in general, any interest or instrument commonly
428 known as a security, or any certificate of interest or participation, any temporary or interim
429 certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or
430 purchase, any of the foregoing.

431 [(45)] (44) "Settlement," in reference to a decedent's estate, includes the full process of
432 administration, distribution, and closing.

433 [(46)] (45) "Sign" means, with present intent to authenticate or adopt a record other

434 than a will:

435 (a) to execute or adopt a tangible symbol; or

436 (b) to attach to or logically associate with the record an electronic symbol, sound, or
437 process.

438 ~~[(47)]~~ (46) "Special administrator" means a personal representative as described in
439 Sections 75-3-614 through 75-3-618.

440 ~~[(48)]~~ (47) "State" means a state of the United States, the District of Columbia, the
441 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of
442 the United States, or a Native American tribe or band recognized by federal law or formally
443 acknowledged by a state.

444 ~~[(49)]~~ (48) "Successor personal representative" means a personal representative, other
445 than a special administrator, who is appointed to succeed a previously appointed personal
446 representative.

447 ~~[(50)]~~ (49) "Successors" means persons, other than creditors, who are entitled to
448 property of a decedent under the decedent's will or this title.

449 ~~[(51)]~~ (50) "Supervised administration" refers to the proceedings described in Title 75,
450 Chapter 3, Part 5, Supervised Administration.

451 ~~[(52)]~~ (51) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD
452 Security Registration Act, means that an individual has neither predeceased an event, including
453 the death of another individual, nor is considered to have predeceased an event under Section
454 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"
455 "survivor," and "surviving."

456 ~~[(53)]~~ (52) "Testacy proceeding" means a proceeding to establish a will or determine
457 intestacy.

458 ~~[(54)]~~ (53) "Testator" includes an individual of either sex.

459 ~~[(55)]~~ (54) "Trust" includes a health savings account, as defined in Section 223,
460 Internal Revenue Code, any express trust, private or charitable, with additions thereto,
461 wherever and however created. The term also includes a trust created or determined by
462 judgment or decree under which the trust is to be administered in the manner of an express
463 trust. The term excludes other constructive trusts, and it excludes resulting trusts,
464 conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6,

Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

~~[(56)]~~ (55) "Trustee" includes an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.

~~[(57) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.]~~

~~[(58)]~~ (56) "Will" includes codicil and any testamentary instrument which merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Section 4. Section **75-1-401** is amended to read:

75-1-401. Notice -- Method and time of giving.

(1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney. Notice shall be given by the clerk posting a copy of the notice for the 10 consecutive days immediately preceding the time set for the hearing in at least three public places in the county, one of which ~~[must]~~ shall be at the courthouse of the county and~~[-]~~ one of which may be on the Utah State Courts' website; and

(a) ~~[(i)]~~ by the clerk mailing a copy ~~[thereof]~~ of the notice at least 10 days before the time set for the hearing by certified, registered, or ordinary first class mail addressed to the person being notified at the post-office address given in the demand for notice, if any, or at the person's office or place of residence, if known; or

~~[(ii)]~~ (b) by delivering a copy ~~[thereof]~~ of the notice to the person being notified personally at least 10 days before the time set for the hearing; and

~~[(b)]~~ (c) if the address, or identity of any person is not known and cannot be ascertained

with reasonable diligence, by publishing[~~-(i)~~] the notice at least once a week for three consecutive weeks [~~a copy thereof~~] in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least 10 days before the time set for the hearing; and

(ii) on the Utah Public Notice Website created in Section 63F-1-701, for three weeks.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

Section 5. Section ~~75-5-501~~ is amended to read:

75-5-501. Power of attorney not affected by disability or lapse of time -- Agent responsibilities.

(1) Whenever a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding:

(a) later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive; or

(b) the lapse of time since the execution of the instrument, unless the instrument states a time of termination.

(2) If an attorney-in-fact or agent determines that the principal has become incapacitated or disabled and the power of attorney by its terms remains in effect or becomes effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent shall:

(a) notify all interested persons of his status as the power of attorney holder within 30 days of the principal's incapacitation, and provide them with his name and address;

(b) provide to any interested persons upon written request, a copy of the power of attorney;

(c) provide to any interested persons upon written request, an annual accounting of the

assets to which the power of attorney applies, unless the power of attorney specifically directs that the attorney-in-fact or agent is not required to do so; and

(d) notify all interested persons upon the death of the principal.

(3) All interested persons shall be notified within 10 days if the attorney-in-fact or agent changes. The notification shall be made by the new attorney-in-fact or agent who shall then be accountable to the interested persons in accordance with Subsection (2).

(4) All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled, except as provided in Section 75-5-503.

(5) A conservator may be appointed for a principal even though the principal has a valid power of attorney in place. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator, pursuant to court order ~~[as provided in Subsection 75-5-408(1)(d)]~~, has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

(6) For the purposes of this section, "interested person" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable.

Section 6. Section **75-5b-102** is amended to read:

75-5b-102. Definitions.

In this chapter:

(1) "Adult" means an individual who has attained 18 years of age.

~~[(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors.]~~

~~[(3)]~~ (2) "Emergency" means circumstances that likely will result in substantial harm to a respondent's health, safety, estate, or welfare, and in which the appointment of a guardian is necessary because no other person has authority to and is willing to act on the respondent's

558 behalf.

559 ~~[(4) "Guardian" means a person appointed by the court to make decisions regarding the~~
560 ~~person of an adult, including a person appointed under Title 75, Chapter 5, Part 3, Guardians of~~
561 ~~Incapacitated Persons.]~~

562 ~~[(5)]~~ (3) "Guardianship order" means an order appointing a guardian.

563 ~~[(6)]~~ (4) "Guardianship proceeding" means a proceeding in which an order for the
564 appointment of a guardian is sought or has been issued.

565 ~~[(7)]~~ (5) "Home state" means the state in which the respondent was physically present
566 for at least six consecutive months immediately before the filing of a petition for the
567 appointment of a guardian or protective order. A period of temporary absence counts as part of
568 the six-month period.

569 ~~[(8) "Incapacitated person" means an adult for whom a guardian has been appointed.]~~

570 ~~[(9)]~~ (6) "Party" means the respondent, petitioner, guardian, conservator, or any other
571 person allowed by the court to participate in a guardianship or protective proceeding.

572 ~~[(10)]~~ (7) "Person," except in the terms "incapacitated person" or "protected person,"
573 means an individual, corporation, business trust, estate, trust, partnership, limited liability
574 company, association, joint venture, government or governmental subdivision, agency or
575 instrumentality, public corporation, or any other legal or commercial entity.

576 ~~[(11) "Protected person" means an adult for whom a protective order has been made.]~~

577 ~~[(12)]~~ (8) "Protective order" means an order appointing a conservator or another court
578 order related to management of an adult's property.

579 ~~[(13) "Protective proceeding" means a judicial proceeding in which a protective order~~
580 ~~is sought or has been issued.]~~

581 ~~[(14)]~~ (9) "Record" means information that is inscribed on a tangible medium or that is
582 stored in an electronic or other medium and is retrievable in perceivable form.

583 ~~[(15)]~~ (10) "Respondent" means an adult for whom a protective order or the
584 appointment of a guardian or conservator is sought.

585 ~~[(16)]~~ (11) "Significant-connection state" means a state, other than the home state, with
586 which a respondent has a significant connection other than mere physical presence and in
587 which substantial evidence concerning the respondent is available.

588 ~~[(17)]~~ (12) "State" means a state of the United States, the District of Columbia, Puerto

Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Section 7. Section **75-5b-302** is amended to read:

75-5b-302. Accepting guardianship or conservatorship transferred from another state.

(1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 75-5b-301, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under Subsection (1) shall be given by the petitioner to those persons who would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice shall be given in the same manner as notice is given in this state.

(3) On the court's own motion or on request of the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to Subsection (1).

(4) The court shall issue an order provisionally granting a petition filed under Subsection (1) unless:

(a) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) the guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 75-5b-301 transferring the proceeding to this state.

(6) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under Title 75, Chapter ~~[5, Part 3, Guardians of Incapacitated Persons]~~ 5c, Utah Protective Proceedings Act, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Section 8. Section **75-5c-101** is enacted to read:

CHAPTER 5c. UTAH PROTECTIVE PROCEEDINGS ACT

Part 1. General Provisions

75-5c-101. Title.

This chapter is known as the "Utah Protective Proceedings Act."

Section 9. Section **75-5c-102** is enacted to read:

75-5c-102. Definitions.

As used in this chapter:

(1) "Best interest decision making standard" means the guardian or conservator, after considering the protected person's expressed wishes, makes the decision that is the least intrusive, least restrictive, and most normalizing course of action to accommodate the protected person's particular functional limitations. Best interest is the standard used when:

(a) following the protected person's wishes would cause the person harm;

(b) the guardian or conservator cannot determine the protected person's wishes; or

(c) the protected person has never had capacity.

(2) "Court" means the district court.

(3) "Health care" and "health care decisions" mean the same as in Section 75-2a-103.

(4) "Legal representative" includes a guardian or conservator acting for a protected person in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the protected person is a beneficiary, an attorney, guardian ad litem, representative payee, and an agent designated under a power of attorney in which the protected person is the principal.

(5) "Professional conservator" means a trust company permitted by the commissioner of financial institutions under Subsection 7-5-2(1) to accept an appointment to act in an agency or fiduciary capacity.

(6) "Professional guardian" means a person who has been certified as a registered

651 guardian or master guardian by the National Guardianship Association.

652 (7) "Respondent" means an individual for whom a guardian, conservator, or protective
653 order is sought.

654 (8) "Substituted judgment decision making standard" means the guardian or
655 conservator makes the decision that the protected person would have made when competent.
656 Substituted judgment is the standard used in all circumstances except those that permit the best
657 interest decision making standard to be used.

658 Section 10. Section **75-5c-103** is enacted to read:

659 **75-5c-103. Incapacity -- Findings -- Factors.**

660 (1) "Incapacity" has the same meaning as in Section 75-1-201.

661 (2) The court shall enter findings in which the court identifies the functional limitations
662 that cause the respondent to be incapacitated. In deciding whether the respondent is
663 incapacitated, the court should consider and weigh, as appropriate:

664 (a) whether the respondent's condition, limitations, and level of functioning leave the
665 respondent at risk of:

666 (i) their property being dissipated;

667 (ii) being unable to provide for their own support, or for the support of individuals
668 entitled to the respondent's support;

669 (iii) being financially exploited;

670 (iv) being abused or neglected, including self-injurious behavior or self-neglect; or

671 (v) having their rights violated;

672 (b) whether the respondent has a physical or mental illness, disability, condition, or
673 syndrome and the prognosis;

674 (c) whether the respondent is able to evaluate the consequences of alternative
675 decisions;

676 (d) whether the respondent can manage the activities of daily living through training,
677 education, support services, mental and physical health care, medication, therapy, assistants,
678 assistive devices, or other means that the respondent will accept;

679 (e) the nature and extent of the demands placed on the respondent by the need for care;

680 (f) the nature and extent of the demands placed on the respondent by their property;

681 (g) the consistency of the respondent's behavior with their long-standing values,

preferences, and patterns of behavior; and

(h) other relevant factors.

Section 11. Section **75-5c-104** is enacted to read:

75-5c-104. Transfer of property to or on behalf of a minor.

(1) Unless the person knows that a conservator has been appointed for a minor or that a proceeding to appoint a conservator is pending, a person required to transfer money or personal property to a minor may transfer up to \$50,000 per year to:

(a) the minor, if the minor is married or emancipated or if payment to the minor is authorized by statute;

(b) the minor's guardian;

(c) the minor's custodian under Title 75, Chapter 5a, Uniform Transfers to Minors Act;

(d) a person responsible for the minor's care and custody with whom the minor resides;

or

(e) a financial institution for deposit in an interest-bearing account or certificate in the minor's sole name and giving notice of the deposit to the minor.

(2) A person who transfers money or property in compliance with this section is not responsible for its proper application.

(3) A custodian, guardian, or a person responsible for the minor's care and custody who receives money or property for a minor shall apply it to the minor's support, care, education, health, and welfare and may not derive a personal financial benefit, except for reimbursement for necessary expenses. Any excess shall be preserved for the minor's future support, care, education, health, and welfare. Any balance shall be transferred to the minor upon emancipation or majority.

(4) A person receiving money under this section on behalf of a minor has the power to settle and release in whole or in part the claims belonging to the minor giving rise to the duty to pay money to the minor.

Section 12. Section **75-5c-105** is enacted to read:

75-5c-105. Delegation of authority by parent or guardian.

A parent or guardian of a minor or protected person may delegate to another person any authority regarding care, custody, or property of the minor or protected person except the authority to consent to marriage or adoption. The delegation shall be by a properly executed

713 power of attorney and may not exceed six months.

714 Section 13. Section **75-5c-106** is enacted to read:

715 **75-5c-106. Venue -- Transfer of venue.**

716 (1) Venue for a proceeding under this chapter is:

717 (a) in the county in which the respondent resides or is present at the time the
718 proceeding is commenced;

719 (b) in the county in which the will is or could be probated, if the guardian or
720 conservator is nominated by will;

721 (c) in the county of the court that committed the respondent under Title 62A, Chapter
722 5, Part 3, Admission to Mental Retardation Facility or under Title 62A, Chapter 15, Part 6,
723 Utah State Hospital and Other Mental Health Facilities; or

724 (d) in the county in which property of the respondent is located, if the petition is to
725 appoint a conservator or for a protective order and the respondent does not reside in this state.

726 (2) If a proceeding is brought in more than one county, the court of the county in which
727 the proceeding is first brought has the exclusive right to proceed unless that court determines
728 that venue is proper in another county and that the interests of justice require that the
729 proceeding be transferred.

730 (3) The court that appoints a guardian or conservator or enters a protective order retains
731 venue for proceedings after the appointment or order unless that court determines that venue is
732 proper in another county and that the interests of justice require that the proceeding be
733 transferred.

734 Section 14. Section **75-5c-107** is enacted to read:

735 **75-5c-107. Appointment and status of guardian or conservator.**

736 (1) A person becomes guardian or a conservator upon acceptance of a court
737 appointment.

738 (2) A guardianship, conservatorship, or entry of a protective order continues until
739 terminated by court order.

740 (3) Acceptance of a testamentary appointment as guardian under a will probated in the
741 state of the testator's domicile is effective in this state.

742 Section 15. Section **75-5c-108** is enacted to read:

743 **75-5c-108. Acceptance of appointment.**

(1) The guardian or conservator has authority to act upon filing an acceptance of appointment. A guardian or conservator shall file an acceptance of appointment within 30 days after the later of:

(a) entry of the order of appointment; or

(b) the occurrence of a future event designated in the appointment order.

(2) By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

(3) If a person nominated by will or signed writing timely complies with Section 75-5c-201, 75-5c-301, or 75-5c-401, the nominee's acts before acceptance of the appointment that are beneficial to the respondent have the same effect as those that occur after acceptance.

Section 16. Section **75-5c-109** is enacted to read:

75-5c-109. Letters of office.

(1) The court shall issue appropriate letters of office to the guardian or conservator. The letters shall state the authority of the guardian or conservator and the property subject to the guardian's or conservator's possession, ownership, or control.

(2) Letters of office are evidence of title to the protected person's property and may be filed or recorded to give notice of title.

Section 17. Section **75-5c-110** is enacted to read:

75-5c-110. Nominating a guardian or conservator.

(1) A person 14 years of age or older may nominate a person to be appointed as guardian or conservator for oneself, for one's spouse, or for one's child whom the parent has or may have in the future by will, durable power of attorney, or other signed writing that:

(a) identifies the nominee and the office for which the nominee is nominated; and

(b) shows that the person is of sound mind and not acting under duress, fraud, or undue influence.

(2) The respondent may nominate someone orally at the hearing if the respondent is 14 years of age or older and has sufficient capacity to express a preference.

(3) The nomination may specify desired limitations on the authority to be given to the guardian or conservator.

(4) The person may revoke or amend the nomination before it is confirmed by the court.

Section 18. Section **75-5c-111** is enacted to read:

75-5c-111. Petition to confirm nomination -- Notice -- Authority to act.

(1) A person who nominates someone to be appointed as guardian or conservator may petition to confirm the nomination if the nominator will likely become incapacitated or unable to care for the respondent within two years.

(2) If no objection is filed within the time permitted or if an objection is filed and withdrawn, the court shall confirm the nomination and cut off the right of others to object if it finds that the nomination is in the respondent's best interest and the nominator will likely become incapacitated or unable to care for the respondent within two years.

(3) If an objection is filed, the court shall conduct proceedings to hear and determine the priority of appointment under Section 75-5c-112. An objection does not preclude confirmation of the nominee.

(4) An order under this section appoints a contingent guardian or conservator but does not determine the respondent's incapacity.

Section 19. Section **75-5c-112** is enacted to read:

75-5c-112. Who may be guardian or conservator -- Priority.

(1) The court may appoint as guardian or conservator any person whose appointment would be in the respondent's best interest.

(2) In appointing a guardian or conservator, the court shall consider qualified persons in the following order of priority, unless the court finds the appointment would be contrary to the respondent's best interest:

(a) a guardian or conservator, other than a substitute or emergency guardian or conservator, currently acting for the respondent in this state or elsewhere or a person nominated by that person;

(b) the respondent's nominee, if the respondent is 14 years of age or older and at the time of the nomination the respondent had sufficient capacity to express a preference;

(c) the respondent's agent appointed under Title 75, Chapter 2a, Advance Health Care Directive Act or Title 75, Chapter 5, Part 5, Powers of Attorney;

(d) the respondent's spouse or a person nominated by a deceased spouse;

(e) the respondent's adult child or a person nominated by a deceased adult child;

(f) the respondent's parent or a person nominated by a deceased parent;

(g) an adult with whom the respondent has resided for more than six months;

(h) an adult who has shown special care and concern for the respondent; and

(i) a professional guardian or conservator.

(3) If a person nominates more than one guardian or conservator, the most recent nomination controls.

(4) If two or more people who have equal priority to nominate a guardian or conservator are dead or incapacitated, the most recent nomination by the last person to die or to be adjudicated incapacitated has priority.

(5) If two or more people have equal priority, the court may select the one most qualified. In the best interest of the respondent, the court may decline to appoint a person having a higher priority and appoint a person having a lower priority or no priority.

(6) An owner, operator, or employee of a long-term care institution at which the respondent is receiving care may not be appointed guardian or conservator unless related to the respondent by blood, marriage, or adoption.

(7) The nomination of a guardian or conservator by a parent does not supersede the parental rights of either parent.

Section 20. Section **75-5c-113** is enacted to read:

75-5c-113. Successor -- Additional or contingent guardian or conservator.

The court may appoint more than one guardian or conservator. The court may appoint a guardian or conservator to serve immediately or upon the occurrence of some future designated event. The court may appoint a successor guardian or conservator to serve in the event of a vacancy. Unless otherwise stated, a successor succeeds to the predecessor's duties, authority, and title to property.

Section 21. Section **75-5c-114** is enacted to read:

75-5c-114. Termination -- Resignation or removal.

(1) A guardianship or conservatorship terminates upon court order.

(2) The court may accept the resignation or order the removal of the guardian or conservator upon finding that resignation or removal would be in the protected person's best interest.

(3) The court may terminate the guardianship, conservatorship, or protective order upon sufficient evidence that:

(a) the protected person has died;

(b) the minor protected person has been adopted, is emancipated, or has attained majority; or

(c) the protected person no longer needs the assistance or protection of a guardian, conservator, or protective order.

(4) Upon presentation of evidence establishing a prima facie case for termination, the court shall order termination, unless it is proven by clear and convincing evidence that continuation of the guardianship or conservatorship is in the protected person's best interest.

(5) Termination of the guardianship or conservatorship or death, incapacity, resignation, or removal of the guardian or conservator does not affect the liability of a guardian or conservator for previous acts or the obligation to account for the protected person's property.

(6) Upon termination of the guardianship or conservatorship, title to the protected person's property passes to the person or their successors. An order terminating the guardianship or conservatorship may be filed or recorded to give notice of title to the property. The order terminating the guardianship or conservatorship shall provide for expenses of administration and direct the guardian or conservator to execute appropriate instruments to evidence transfer of title, to confirm a distribution previously made, and to file a final report.

(7) The court shall enter a final discharge order upon the approval of the final report and satisfaction of any other conditions ordered by the court.

Section 22. Section **75-5c-115** is enacted to read:

75-5c-115. Emergency appointment.

(1) The court may appoint an emergency guardian or conservator if the court finds that:

(a) following the procedures of this chapter would likely result in substantial harm to the respondent's health, safety, or welfare;

(b) no other person appears to have authority to act;

(c) the welfare of the respondent requires immediate action; and

(d) the appointment would be in the respondent's best interest.

(2) The court may appoint an emergency guardian or conservator ex parte if it finds that the respondent will be substantially harmed before a hearing can be held. If the respondent is not represented by an attorney, the court shall appoint an attorney to represent the respondent.

(3) The petition and notice of the hearing shall be served using the method most likely to give prompt actual notice. If an emergency guardian or conservator is appointed without notice and hearing, notice of the appointment shall be served within two days after the appointment and a hearing on the appropriateness of the appointment shall be held within five days after the appointment.

(4) Appointment of an emergency guardian or conservator is not a determination of the respondent's incapacity.

(5) After a hearing, the court may appoint an emergency guardian or conservator for a specified period not to exceed 60 days, and the court may remove an emergency guardian or conservator at any time. The appointment terminates on the date specified by the court.

(6) The court may order only the authority justified by the emergency. The emergency guardian or conservator may exercise only the authority specified in the order. The emergency guardian or conservator shall make any report the court requires. The provisions of this chapter concerning guardians or conservators apply to an emergency guardian or conservator.

Section 23. Section **75-5c-116** is enacted to read:

75-5c-116. Substitute appointment.

(1) The court may appoint a substitute guardian or conservator if it finds that:

(a) the guardian or conservator is not effectively exercising authority or performing duties;

(b) the protected person's welfare requires immediate action; and

(c) the appointment would be in the protected person's best interests.

(2) The court may appoint a substitute guardian or conservator ex parte if it finds that the respondent will be substantially harmed before a hearing can be held. Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to represent the respondent.

(3) The petition and notice of the hearing shall be served using the method most likely to give prompt actual notice. If a substitute guardian or conservator is appointed without notice and hearing, notice of the appointment shall be served within two days after the appointment and a hearing on the appropriateness of the appointment must be held within five days after the appointment.

(4) After the hearing, the court may appoint a substitute guardian or conservator for a

specified period not to exceed six months, and the court may remove a substitute guardian or conservator at any time.

(5) Except as ordered by the court, a substitute guardian or conservator has the authority and duties in the previous order of appointment. The authority of a previously appointed guardian or conservator is suspended as long as a substitute guardian or conservator has authority.

(6) A substitute guardian or conservator shall make any report the court requires. The provisions of this chapter concerning guardians and conservators apply to a substitute guardian or conservator.

Section 24. Section **75-5c-117** is enacted to read:

75-5c-117. Proceedings after appointment.

(1) After appointing a guardian or conservator or entering a protective order, the court may:

(a) require, increase, or decrease a bond or collateral;

(b) require a report from the guardian or conservator;

(c) direct distribution;

(d) instruct the guardian or conservator concerning a fiduciary responsibility;

(e) modify the authority of the guardian or conservator because authority previously granted is excessive or insufficient or because of a change in the protected person's incapacity;

(f) permit or deny the guardian or conservator to exercise authority requiring a court order;

(g) terminate the guardianship or conservatorship;

(h) remove a guardian or conservator;

(i) accept the resignation of a guardian or conservator;

(j) appoint a substitute guardian or conservator;

(k) appoint a successor or additional guardian or conservator;

(l) find the guardian or conservator in contempt for:

(i) violating a fiduciary responsibility imposed by statute, rule, or court order; or

(ii) decisions or acts by the guardian or conservator that the court finds to be substantially contrary to the management plan;

(m) approve a management plan; or

(n) grant other appropriate relief.

(2) A protected person or person interested in the welfare of the protected person may file a petition or a motion under the Utah Rules of Civil Procedure for an order under this section.

(3) A protected person is entitled to the same rights and procedures in proceedings under this section as in an original proceeding, including the appointment of an attorney.

(4) Sanctions for contempt of court include removal of the guardian or conservator and imposing on the guardian or conservator personal responsibility for any financial loss caused by the guardian's or conservator's wrongful conduct.

Section 25. Section **75-5c-118** is enacted to read:

75-5c-118. Guardian ad litem.

At any stage of a protective proceeding, a court may appoint a guardian ad litem if the court determines that representation of the interests of the respondent or protected person is inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals. The court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.

Section 26. Section **75-5c-119** is enacted to read:

75-5c-119. Bonds.

(1) Subject to the provisions of Title 7, Financial Institutions Act, relating to the bonding requirements for corporate fiduciaries, the court may require a guardian or conservator to furnish a bond with sureties as it may specify conditioned upon faithful discharge of all fiduciary responsibilities.

(2) Unless otherwise directed, the bond must be in the amount of:

(a) the aggregate capital value of the protected person's property subject to the guardian's or conservator's possession, ownership, or control; plus

(b) one year's estimated income; minus

(c) the value of assets deposited under arrangements requiring a court order for removal and the value of any real property that the guardian or conservator, by express limitation, lacks authority to sell or convey without court authorization.

(3) The court may dispense with the bond for good cause. Instead of sureties, the court may accept collateral for the performance of the bond, including a pledge of securities or a

961 mortgage of real property.

962 (4) Unless otherwise provided by the terms of the bond, the sureties and the guardian
963 or conservator are jointly and severally liable.

964 (5) By executing the bond, the surety consents to the jurisdiction of the court in any
965 proceeding about the guardian's or conservator's fiduciary responsibilities in which the surety is
966 named as a party. Notice of the proceeding and a copy of any petition, motion, or other paper
967 shall be served on the surety under Utah Rules of Civil Procedure, Rule 5, at the address shown
968 in the court records and at any other address known to the petitioner.

969 (6) If a proceeding against the primary obligor is not barred, a proceeding may be
970 brought by a conservator, successor conservator, or any interested person against a surety for
971 breach of the obligation of the bond. The bond may be proceeded against until liability under
972 the bond is exhausted.

973 Section 27. Section **75-5c-120** is enacted to read:

974 **75-5c-120. Compensation for services and reimbursement of expenses.**

975 (1) If not otherwise paid and if payment does not deprive the protected person or
976 individuals entitled to the protected person's support of food, shelter, clothing, and other
977 necessities, the following are entitled to reasonable payment from the estate for services and
978 expenses:

979 (a) the respondent's or protected person's attorney, guardian ad litem, guardian, and
980 conservator;

981 (b) the petitioner's attorney, if the petition results in the appointment of a guardian or
982 conservator, the entry of a protective order, or the entry of any other order that benefits the
983 protected person; and

984 (c) any person appointed by the court.

985 (2) To qualify for payment, the petition shall be filed or the service provided in good
986 faith, be reasonable and necessary, be conducted responsibly, and benefit the respondent or
987 protected person.

988 (3) Claims for compensation and reimbursement shall be presented to the conservator,
989 if one has been appointed. If there is no conservator, or if the conservator is the person to be
990 paid, someone affiliated with the person to be paid, or someone within the third degree of
991 relationship to the person to be paid, the compensation or reimbursement may be approved by

the court. In allowing the claim, the conservator or court may consider the complexity of the service, the provider's experience, and any other relevant factor.

(4) If the court finds the petition is without merit, the petitioner shall pay for the services and expenses in Subsection (1).

(5) If the court determines that the payments are excessive or inappropriate, the excessive or inappropriate amount shall be repaid to the estate.

Section 28. Section **75-5c-121** is enacted to read:

75-5c-121. Fiduciary's personal funds.

A guardian or conservator has no legal obligation to use the guardian's or conservator's personal funds for the protected person's expenses solely by reason of the guardianship or conservatorship.

Section 29. Section **75-5c-122** is enacted to read:

75-5c-122. Monitoring appointments.

The court shall establish a system for monitoring guardians and conservators, including their reports. The court may appoint a visitor to review records of or any report filed by a guardian or conservator. The court may appoint a visitor to interview the protected person, the guardian, or the conservator and to make any other investigation the court directs. The court may order a guardian, or conservator to submit the assets subject to the guardian's or conservator's possession, ownership, or control to an examination made in a manner the court directs.

Section 30. Section **75-5c-123** is enacted to read:

75-5c-123. Liability on reported matters.

An order, after notice, approving an intermediate report of a guardian or conservator adjudicates liabilities concerning matters adequately disclosed in the report. An order, after notice, approving a final report adjudicates all previously unsettled liabilities relating to the guardianship or conservatorship adequately disclosed in the report.

Section 31. Section **75-5c-201** is enacted to read:

Part 2. Appointment of a Guardian for a Minor

75-5c-201. Petition to appoint a guardian for a minor -- Findings -- Procedures.

(1) A minor or a person interested in the minor's welfare may file a verified petition to

1022 appoint a guardian. If the petitioner is nominated by will or signed writing, the petitioner shall
1023 file the petition and a copy of the will or signed writing within 30 days after:

1024 (a) the nominator's death;
1025 (b) the nominator's adjudicated incapacity; or
1026 (c) a written determination by a physician who has examined the nominator that the
1027 nominator is no longer able to care for the minor.

1028 (2) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing
1029 on the petition.

1030 (3) The court shall appoint a guardian if it finds that:

1031 (a) the appointment is in the respondent's best interests;
1032 (b) a qualified person seeks appointment;
1033 (c) the court has jurisdiction and venue is proper;
1034 (d) the required notices have been given; and
1035 (e) (i) the parents consent to the appointment;
1036 (ii) all parental rights have been terminated; or
1037 (iii) the parents are unwilling or unable to exercise their parental rights.

1038 (4) The court may appoint a guardian for a specified period of time. The guardian may
1039 not serve past the respondent's 18th birthday.

1040 (5) In other cases, the court may dismiss the petition or make any other disposition that
1041 will serve the respondent's best interests.

1042 (6) If the court determines that the respondent's best interests are or may be
1043 inadequately represented, it may appoint an attorney to represent the respondent, giving
1044 consideration to the respondent's choice if the respondent is 14 years of age or older.

1045 Section 32. Section **75-5c-202** is enacted to read:

1046 **75-5c-202. Guardian's authority.**

1047 (1) Except as otherwise limited by the court, a guardian has the authority of a parent
1048 regarding the protected person's support, care, education, health, and welfare.

1049 (2) A guardian may:

1050 (a) take custody of the protected person and establish the person's dwelling place, but
1051 may establish or move the protected person's dwelling place outside of this state only if
1052 approved by court order;

(b) consent to medical or other care, treatment, or service for the protected person;

(c) consent to the protected person's marriage;

(d) if a conservator has not been appointed, apply for, start proceedings for, receive, and compel delivery of property due the protected person or benefits to which the protected person may be entitled, up to \$50,000 per year; and

(e) if a conservator has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the protected person or to pay money for the protected person's benefit.

(3) The court may expressly authorize the guardian to consent to adoption of the protected person.

Section 33. Section **75-5c-203** is enacted to read:

75-5c-203. Guardian's duties.

(1) Except as otherwise limited by the court, the guardian has the duties and responsibilities of a parent regarding the protected person's support, care, education, health, and welfare.

(2) The guardian shall:

(a) within 14 days after appointment, serve on the protected person and all other people entitled to notice of the petition, a copy of the appointment order and notice of the right to request termination or modification;

(b) within 90 days after appointment, file and serve a management plan as required by court rule or court order, describing the strategies that will be used to implement the court order;

(c) file and serve a report on the protected person's condition to the satisfaction of the court annually, upon resignation or removal, upon termination, and as required by court rule or court order;

(d) file a final report and petition to terminate the guardianship within 30 days after the protected person dies or reaches majority;

(e) immediately notify the court if the protected person or guardian changes dwelling place;

(f) if reasonable under the circumstances, encourage the protected person to participate in decisions and act on their own behalf;

(g) if reasonable under the circumstances, delegate to the protected person responsibility for decisions affecting their welfare;

(h) become and remain personally acquainted with the protected person and maintain sufficient contact with the protected person to know of their preferences, values, capabilities, limitations, needs, opportunities, and physical and mental health;

(i) when acting on behalf of the protected person, exercise the degree of care, diligence, and good faith that an ordinarily careful person exercises in their own affairs;

(j) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;

(k) take reasonable care of the protected person's personal effects, and if necessary to protect the protected person's property, petition for the appointment of a conservator or for a protective order under Title 75, Chapter 5c, Part 4, Appointment of a Conservator and Other Protective Orders;

(l) expend the protected person's money for their current needs for support, care, education, health, and welfare;

(m) conserve for the protected person's future needs any of the estate that exceeds the protected person's current needs or, if a conservator has been appointed, pay the excess to the conservator at least annually;

(n) keep the protected person's estate separate from the guardian's money and property;

(o) keep contemporaneous records and make them available for inspection as directed by the court;

(p) at termination, deliver any of the estate subject to the guardian's possession, ownership, or control and any records as directed by the court;

(q) if a conservator has been appointed, account at least annually to the conservator for the protected person's income and expenses and for any of the estate subject to the guardian's possession, ownership, or control; and

(r) if a conservator has not been appointed:

(i) file and serve within 90 days after appointment, a management plan as required by court rule or court order describing the strategies that will be used to implement the court order;

(ii) file and serve within 90 days after appointment, a detailed inventory of the estate subject to the guardian's possession, ownership, or control under an oath or affirmation that the

1115 inventory is believed to be complete and accurate as far as information permits; and
1116 (iii) file and serve a report about the administration of the protected person's estate to
1117 the satisfaction of the court annually, upon resignation or removal, upon termination, and as
1118 required by court rule or court order.

1119 (3) If a protected person's parent consents to the protected person's adoption, the
1120 guardian is entitled to:

1121 (a) receive notice of and intervene in the adoption proceeding; and

1122 (b) present evidence relevant to the protected person's best interests.

1123 (4) A parent of a protected person retains residual parental rights and duties as defined
1124 in Section 78A-6-105.

1125 Section 34. Section **75-5c-204** is enacted to read:

1126 **75-5c-204. Guardian's personal liability.**

1127 (1) A guardian is not liable to third persons for the protected person's acts solely by
1128 reason of the guardianship.

1129 (2) If the guardian performs fiduciary responsibilities with the degree of care,
1130 diligence, and good faith that an ordinarily careful person exercises in their own affairs, the
1131 guardian is not liable for acts or omissions in performing the fiduciary responsibilities.

1132 (3) If the guardian selects a third person to perform a service for the protected person
1133 with the degree of care, diligence, and good faith that an ordinarily careful person exercises in
1134 their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of
1135 the third person.

1136 Section 35. Section **75-5c-301** is enacted to read:

1137 **Part 3. Appointment of a Guardian for an Adult**

1138 **75-5c-301. Petition to appoint a guardian for an adult.**

1139 The person to be protected or any person interested in the respondent's welfare may file
1140 a verified petition to appoint a guardian. If the petitioner is nominated by will or signed
1141 writing, the petitioner shall file the petition and a copy of the will or signed writing within 30
1142 days after:

1143 (1) the nominator's death;

1144 (2) the nominator's adjudicated incapacity; or

1145 (3) a written determination by a physician who has examined the nominator that the

1146 nominator is no longer able to care for the respondent.

1147 Section 36. Section **75-5c-302** is enacted to read:

1148 **75-5c-302. Procedures before hearing.**

1149 (1) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing
1150 on the petition.

1151 (2) If the respondent is not represented by an attorney, the court shall appoint an
1152 attorney to represent the respondent.

1153 Section 37. Section **75-5c-303** is enacted to read:

1154 **75-5c-303. Appointment of guardian -- Standard of evidence -- Petition for**
1155 **protective order.**

1156 (1) The court may appoint a guardian only if the court finds, based on clear and
1157 convincing evidence, that:

1158 (a) the person to be protected has knowingly and voluntarily petitioned the court to
1159 appoint a guardian; or

1160 (b) the respondent is incapacitated and the respondent's particular functional limitations
1161 cannot be met by less restrictive means.

1162 (2) With appropriate findings, the court may treat the petition as one for a protective
1163 order and enter an appropriate protective order.

1164 (3) If petitioner does not prove the elements of the petition, the court shall dismiss the
1165 petition.

1166 (4) Appointment of a guardian based on a request by the person to be protected is not a
1167 determination of that person's incapacity.

1168 Section 38. Section **75-5c-304** is enacted to read:

1169 **75-5c-304. Least restrictive order -- Factors.**

1170 The court shall enter the least restrictive order consistent with its findings to
1171 accommodate the respondent's particular functional limitations and demonstrated needs,
1172 including appointive and other orders that will encourage the respondent to develop maximum
1173 self-reliance and independence. The court should consider and weigh, as appropriate:

1174 (1) whether the protected person can manage the activities of daily living through
1175 training, education, support services, mental and physical health care, medication, therapy,
1176 assistants, assistive devices, or other means that the person will accept;

(2) whether the protected person has planned for health care and financial decision making, such as an advance health care directive, a power of attorney, or a trust or jointly held account, and whether the less restrictive alternatives to a guardianship meet the respondent's needs;

(3) whether the incapacity is likely to be temporary;

(4) the protected person's long-standing values, preferences, and patterns of behavior;
and

(5) other relevant factors.

Section 39. Section **75-5c-305** is enacted to read:

75-5c-305. Guardian's authority limited to court order.

(1) The protected person retains all rights, power, authority, and discretion not expressly granted to the guardian by statute or court order. The protected person retains the right to vote in governmental elections unless the court finds by clear and convincing evidence that the protected person is unable to communicate, with or without accommodation, the specific desire to participate in the voting process. The court may not grant to the guardian the authority to vote on the protected person's behalf.

(2) The guardian has the duties specified by statute or court order. The guardian has only the authority specified by court order. The order shall limit the guardian's authority to what is necessary to accommodate the protected person's particular functional limitations.

(3) If supported by the findings, and except as provided in Section 75-5c-306, the court may grant to the guardian the authority to:

(a) make health care decisions;

(b) consent to admission of the protected person to a licensed health care facility for short-term placement for the purpose of assessment, rehabilitative care, or respite care;

(c) admit the protected person to a licensed health care facility for long-term custodial placement;

(d) make arrangements for the protected person's support, care, comfort, education, and welfare;

(e) take custody of the protected person and make arrangements for a dwelling place;

(f) take reasonable care of the protected person's personal effects; and

(g) make other decisions and give other consents on behalf of the protected person as

1208 specified in the order and as necessary to accommodate the protected person's particular
1209 functional limitations.

1210 (4) If the court does not appoint a conservator, and if supported by the findings, the
1211 order may grant to the guardian the authority to:

1212 (a) take control of and manage a savings account or checking account;

1213 (b) apply for, start proceedings for, receive, and compel delivery of property due the
1214 protected person or benefits to which the protected person may be entitled, up to \$50,000 per
1215 year;

1216 (c) commence a proceeding, including an administrative proceeding, or take other
1217 appropriate action to compel a person to support the protected person or to pay money for the
1218 protected person's benefit;

1219 (d) prosecute, defend, and settle legal actions, including administrative proceedings, on
1220 behalf of the protected person;

1221 (e) obtain legal advice and representation on behalf of the protected person;

1222 (f) pay the protected person's debts;

1223 (g) give gifts, donations, or contributions on behalf of the protected person within the
1224 limits of Section 75-5c-409;

1225 (h) file tax returns on behalf of the protected person and pay taxes owed by the
1226 protected person; and

1227 (i) provide for the support, care, comfort, education, and welfare of individuals entitled
1228 to the protected person's support.

1229 Section 40. Section **75-5c-306** is enacted to read:

1230 **75-5c-306. Restrictions on the guardian's authority.**

1231 (1) The guardian may not:

1232 (a) consent to commitment of the protected person to a mental retardation facility, but
1233 shall petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to Mental
1234 Retardation Facility;

1235 (b) consent to commitment of the protected person to a local mental health authority,
1236 but shall petition the court for an order under Title 62A, Chapter 15, Part 6, Utah State Hospital
1237 and Other Mental Health Facilities;

1238 (c) consent to sterilization of the protected person, but shall petition the court for an

order under Title 62A, Chapter 6, Sterilization of Handicapped Person;

(d) consent to termination of the parental rights in the protected person or of the protected person's parental rights in another, but shall petition the juvenile court for an order to terminate parental rights under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or

(e) except as provided in Subsection 75-5c-305(5), exercise the duties or authority of a conservator unless appointed as a conservator.

(2) Unless permitted by the court, the guardian may not:

(a) consent to the admission of the protected person to a psychiatric hospital or other mental health care facility;

(b) consent to participation in medical research, electroconvulsive therapy or other shock treatment, experimental treatment, forced medication with psychotropic drugs, abortion, psychosurgery, a procedure that restricts the protected person's rights, or to be a living organ donor;

(c) consent to termination of life-sustaining treatment if the protected person has never had health care decision making capacity;

(d) consent to name change, adoption, marriage, annulment, or divorce of the protected person;

(e) establish or move the protected person's dwelling place outside of this state; or

(f) restrict the protected person's physical liberty, communications, or social activities more than reasonably necessary to protect the protected person or others from harm.

(3) (a) The guardian, someone affiliated with the guardian, or someone within the third degree of relationship to the guardian may not purchase the protected person's property unless permitted by the conservator.

(b) If there is no conservator or if the conservator is the guardian, someone affiliated with the guardian, or someone within the third degree of relationship to the guardian, may not purchase the protected person's property unless permitted by the court.

Section 41. Section **75-5c-307** is enacted to read:

75-5c-307. Guardian's duties.

The guardian shall:

(1) within 14 days after appointment, serve on the protected person and all other people

1270 entitled to notice of the petition, a copy of the appointment order and notice of the right to
1271 request termination or modification;

1272 (2) within 90 days after appointment, file and serve a management plan as required by
1273 court rule or court order describing the strategies that will be used to implement the court
1274 order;

1275 (3) file and serve a report on the protected person's condition to the satisfaction of the
1276 court annually, upon resignation or removal, upon termination, and as required by court rule or
1277 court order;

1278 (4) file a final report and petition to terminate the guardianship within 30 days after the
1279 protected person dies;

1280 (5) file a petition to terminate or modify the guardianship within 30 days after the
1281 protected person becomes capable of exercising rights previously removed;

1282 (6) immediately notify the court if the protected person or guardian changes a dwelling
1283 place;

1284 (7) exercise duties and authority authorized by statute and court order as necessary to
1285 accommodate the protected person's particular functional limitations;

1286 (8) if reasonable under the circumstances, encourage the protected person to:

1287 (a) participate in decisions;

1288 (b) act on their own behalf; and

1289 (c) overcome the functional limitations that resulted in the protected person's
1290 incapacity;

1291 (9) if reasonable under the circumstances, delegate to the protected person
1292 responsibility for decisions affecting their own welfare;

1293 (10) make decisions using the substituted judgment decision making standard or the
1294 best interest decision making standard, whichever applies in the circumstances;

1295 (11) become and remain personally acquainted with the protected person and maintain
1296 sufficient contact with the protected person to know their preferences, values, capabilities,
1297 limitations, needs, opportunities, and physical and mental health;

1298 (12) when acting on behalf of the protected person, exercise the degree of care,
1299 diligence, and good faith that an ordinarily careful person exercises in their own affairs;

1300 (13) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;

(14) if necessary to protect the protected person's property, petition for the appointment of a conservator or for a protective order under Title 75, Chapter 5c, Part 4, Appointment of a Conservator and Other Protective Orders;

(15) expend the protected person's money for their current needs for support, care, education, health, and welfare;

(16) conserve for the protected person's future needs any of the estate that exceeds the person's current needs or, if a conservator has been appointed, pay the excess to the conservator at least annually;

(17) keep the protected person's estate separate from the guardian's money and property;

(18) keep contemporaneous records and make them available for examination as directed by the court;

(19) at termination, deliver any of the estate subject to the guardian's possession, ownership, or control and any records as directed by law or the court;

(20) if a conservator has been appointed, account at least annually to the conservator for the protected person's income and expenses and for any of the estate subject to the guardian's possession, ownership, or control; and

(21) if a conservator has not been appointed:

(a) file and serve within 90 days after appointment a management plan as required by court rule or court order describing the strategies that will be used to implement the court order;

(b) file and serve within 90 days after appointment a detailed inventory of the estate subject to the guardian's possession, ownership, or control under an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits; and

(c) file and serve a report about the administration of the protected person's estate to the satisfaction of the court annually, upon resignation or removal, upon termination, and as required by court rule or court order.

Section 42. Section **75-5c-308** is enacted to read:

75-5c-308. Guardian's personal liability.

(1) A guardian is not liable to third persons for the protected person's acts solely by reason of the guardianship.

(2) If the guardian performs fiduciary responsibilities with the degree of care, diligence, and good faith that an ordinarily careful person exercises in their own affairs, the guardian is not liable for acts or omissions in performing the fiduciary responsibilities.

(3) If the guardian selects a third person to perform a service for the protected person with the degree of care, diligence, and good faith that an ordinarily careful person exercises in their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of the third person.

Section 43. Section **75-5c-309**, which is renumbered from Section 75-5-314 is renumbered and amended to read:

[75-5-314]. 75-5c-309. Mentally incompetent veteran -- Evidence of necessity for appointment of guardian.

~~[Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a]~~ A certificate of the administrator or [his] a duly authorized representative, that [such person] the respondent has been rated incompetent by the veterans administration on examination ~~[in accordance with the]~~ under veterans administration laws and regulations ~~[governing such veterans administration]~~ and that the appointment of a guardian is a condition precedent to the payment of any money ~~[due such ward]~~ due the respondent by the veterans administration~~[, shall be prima facie]~~ is evidence of the necessity for ~~[such]~~ the appointment.

Section 44. Section **75-5c-310**, which is renumbered from Section 75-5-315 is renumbered and amended to read:

[75-5-315]. 75-5c-310. Copies of public records furnished to veterans administration.

~~[When]~~ If a copy of [any] a public record is required by the veterans administration to [be used in determining] determine the eligibility of [any person] an applicant to participate in [benefits made available by the veterans administration, the official custodian of such] veterans administration benefits, the custodian of the public record shall without charge provide a certified copy of the record to the applicant [for such benefits] or any person acting on behalf of the [authorized representative of the] veterans administration [with a certified copy of such record].

Section 45. Section **75-5c-401** is enacted to read:

Part 4. Appointment of a Conservator and Other Protective Orders

75-5c-401. Petition to appoint a conservator or enter a protective order.

(1) The following may file a verified petition to appoint a conservator or to enter a protective order:

(a) the person to be protected;

(b) an individual interested in the respondent's estate, affairs, or welfare; or

(c) a person who would be adversely affected by lack of effective management of the respondent's property and business affairs.

(2) If the petitioner is nominated by will or signed writing, the petitioner shall file the petition and a copy of the will or signed writing within 30 days after:

(a) the nominator's death;

(b) the nominator's adjudicated incapacity; or

(c) a written determination by a physician who has examined the nominator that the nominator is no longer able to care for the respondent.

Section 46. Section **75-5c-402** is enacted to read:

75-5c-402. Jurisdiction over business affairs of respondent.

Until termination, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservatorship or protective order;

(2) exclusive jurisdiction to determine how the respondent's estate that is subject to the laws of this state will be managed, expended, or distributed to or for the use of the respondent, individuals entitled to the respondent's support, or other claimants; and

(3) concurrent jurisdiction to determine the validity of claims against the respondent or the respondent's estate and questions of title concerning estate assets.

Section 47. Section **75-5c-403** is enacted to read:

75-5c-403. Petition to appoint a conservator or enter a protective order --

Preliminary application of property -- Appointment of counsel.

(1) Upon receipt of a petition to appoint a conservator or enter a protective order, the court shall schedule a hearing on the petition.

(2) After a preliminary hearing and without notice, the court may issue orders to preserve and apply the respondent's property as may be required for the support of the respondent or of individuals entitled to the respondent's support. The court may appoint a

1394 master to assist in the task.

1395 (3) Unless an adult respondent is represented by an attorney, the court shall appoint an
1396 attorney to represent the respondent.

1397 (4) If the court determines that a minor respondent's best interests are inadequately
1398 represented, it may appoint an attorney to represent the respondent, giving consideration to the
1399 respondent's choice if the respondent is 14 years of age or older.

1400 Section 48. Section ~~75-5c-404~~ is enacted to read:

1401 **75-5c-404. Petition to appoint a conservator or enter a protective order for a**
1402 **minor -- Findings.**

1403 (1) The court shall appoint a conservator or enter a protective order for a minor if it
1404 finds that:

1405 (a) the order is in the respondent's best interests;

1406 (b) a qualified person seeks appointment;

1407 (c) the court has jurisdiction and venue is proper;

1408 (d) the required notices have been given; and

1409 (e) the respondent:

1410 (i) owns money or property requiring management or protection that cannot otherwise
1411 be provided;

1412 (ii) has or may have business affairs that may be put at risk or prevented because of the
1413 respondent's age;

1414 (iii) has property that will be wasted or dissipated unless management is provided; or

1415 (iv) needs money for the support, care, education, health, and welfare of the respondent
1416 or of individuals who are entitled to the respondent's support and that protection is necessary or
1417 desirable to obtain or provide the money.

1418 (2) The court may appoint a conservator for a specified time period. The conservator
1419 may not serve past the respondent's 18th birthday.

1420 (3) In other cases, the court may dismiss the proceeding or make any other disposition
1421 that will serve the respondent's best interests.

1422 Section 49. Section ~~75-5c-405~~ is enacted to read:

1423 **75-5c-405. Petition to appoint a conservator or enter a protective order for an**
1424 **adult -- Findings.**

(1) The court shall appoint a conservator or enter a protective order for an adult if it finds:

(a) by clear and convincing evidence, that the person to be protected has knowingly and voluntarily petitioned the court to appoint a conservator or enter a protective order; or

(b) (i) by clear and convincing evidence, that the respondent is unable to manage property and business affairs because the respondent is incapacitated, missing, detained, or unable to return to the United States; and

(ii) by a preponderance of evidence, that the respondent:

(A) has property that will be wasted or dissipated unless management is provided; or

(B) needs money for the support, care, education, health, and welfare of the respondent or of individuals who are entitled to the respondent's support and that protection is necessary or desirable to obtain or provide the money.

(2) Appointment of a conservator or entry of a protective order based on a request by the person to be protected or because the respondent is missing, detained, or unable to return to the United States is not a determination of that person's incapacity.

(3) Appointment of a conservator or entry of a protective order may not be denied solely because the respondent has a valid power of attorney.

Section 50. Section **75-5c-406** is enacted to read:

75-5c-406. Least restrictive order -- Factors.

The court shall enter the least restrictive order consistent with its findings to accommodate the respondent's particular functional limitations and demonstrated needs, including appointive and other orders that will encourage the respondent to develop maximum self-reliance and independence. The court may consider and weigh, as appropriate:

(1) whether the protected person can manage the activities of daily living through training, education, support services, mental and physical health care, medication, therapy, assistants, assistive devices, or other means that the person will accept;

(2) whether the protected person has planned for financial decision making, such as a power of attorney, a trust, or jointly held account, and whether the less restrictive alternatives to a conservatorship meet the respondent's needs;

(3) whether the incapacity is likely to be temporary;

(4) the protected person's long-standing values, preferences, and patterns of behavior;

1456 and

1457 (5) other relevant factors.

1458 Section 51. Section ~~75-5c-407~~ is enacted to read:

1459 **75-5c-407. Authority of court.**

1460 (1) Upon determining that a basis exists for a conservatorship or protective order, the
1461 court has the following authority, which may be exercised directly or through a conservator:

1462 (a) The court has all the authority over the estate and business affairs of a minor
1463 protected person which may be necessary for the best interest of the protected person and
1464 members of the protected person's immediate family.

1465 (b) The court has all the authority over the estate and business affairs of an adult
1466 protected person for the benefit of the protected person and individuals entitled to the protected
1467 person's support that the protected person could exercise if present and not under
1468 conservatorship or protective order.

1469 (2) The court may limit authority otherwise conferred on a conservator and may
1470 remove or modify any limitation at any time.

1471 Section 52. Section ~~75-5c-408~~ is enacted to read:

1472 **75-5c-408. Protective arrangements and single transactions.**

1473 (1) Upon determining that a basis exists for a protective order, the court, without
1474 appointing a conservator, may:

1475 (a) authorize, direct, or ratify any transaction necessary or desirable to achieve any
1476 arrangement for security, service, or care meeting the foreseeable needs of the protected person,
1477 including:

1478 (i) payment, delivery, deposit, or retention of funds or property;

1479 (ii) sale, mortgage, lease, or other transfer of property;

1480 (iii) purchase of an annuity;

1481 (iv) making a contract for life care, deposit contract, or contract for training and
1482 education; or

1483 (v) addition to or establishment of a suitable trust; and

1484 (b) authorize, direct, or ratify any other contract, trust, will, or transaction relating to
1485 the protected person's property and business affairs, including settlement of a claim, upon
1486 determining that it is in the protected person's best interest.

(2) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in Subsection 75-5c-409(3).

(3) The court may appoint a master to assist in any transaction or protective arrangement authorized under this section. The master has the authority conferred by the order and shall serve until discharged after reporting to the court.

Section 53. Section **75-5c-409** is enacted to read:

75-5c-409. Action requiring court approval.

(1) After notice to interested persons and upon express authorization of the court, a conservator for a protected person other than a minor may:

(a) if an estate is ample to provide for the distributions authorized by Section 75-5c-417, give gifts, donations, and contributions that the protected person might have been expected to give, in amounts that do not exceed in the aggregate for any calendar year 20% of the estate income in that year;

(b) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(c) exercise or release a power of appointment;

(d) create a revocable or irrevocable trust of estate property, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;

(e) exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value;

(f) exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and

(g) make, amend, or revoke the protected person's will.

(2) A conservator, in making, amending, or revoking the protected person's will, shall comply with Title 75, Chapter 2, Part 5, Wills.

(3) In exercising or in approving a conservator's exercise of the authority listed in Subsection (1), the court shall use the substituted judgment decision making standard, unless the best interest decision making standard is permitted by law. The court shall also consider:

(a) the financial needs of the protected person, the needs of individuals entitled to the protected person's support, and the interest of creditors;

(b) possible reduction of tax liabilities;

(c) eligibility for governmental assistance;

(d) the protected person's previous pattern of giving or level of support;

(e) the existing estate plan;

(f) the protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and

(g) any other relevant factors.

(4) A conservator may revoke or amend a durable power of attorney of which the protected person is the principal. If a durable power of attorney is in effect, a decision of the conservator takes precedence over that of the agent unless the court orders otherwise.

Section 54. Section **75-5c-410** is enacted to read:

75-5c-410. Conservator's duties.

The conservator shall:

(1) within 14 days after appointment, serve on the protected person, and all other people entitled to notice of the petition, a copy of the appointment order and notice of the right to request termination or modification;

(2) within 90 days after appointment, file and serve a management plan as required by court rule or court order describing the strategies that will be used to implement the court order;

(3) within 90 days after appointment, file and serve a detailed inventory of the estate subject to the conservator's possession, ownership, or control under an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits;

(4) file and serve a report about the administration of the protected person's estate to the satisfaction of the court annually, upon resignation or removal, upon termination, and as required by court rule or court order;

(5) comply with Section 75-5c-418 if the protected person dies;

(6) file a petition to terminate or modify the conservatorship within 30 days after the protected person becomes capable of exercising rights previously removed;

(7) if the appointment is for a minor protected person, file a final report and petition to

terminate the conservatorship within 30 days after the protected person reaches majority;

(8) immediately notify the court if the protected person or conservator changes a dwelling place;

(9) exercise duties and authority authorized by statute and court order as necessary to accommodate the protected person's particular functional limitations;

(10) if reasonable under the circumstances, encourage the protected person to:

(a) participate in decisions;

(b) act on their own behalf; and

(c) overcome the functional limitations that resulted in the protected person's incapacity;

(11) if reasonable under the circumstances, delegate to the protected person responsibility for decisions affecting their own welfare;

(12) act as a fiduciary and observe the standard of care of a trustee under Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act;

(13) keep contemporaneous records of the administration of the estate and make them available for examination as directed by the court;

(14) take into account any estate plan of the protected person known to the conservator and may examine the will and any other donative, nominative, or other appointive instrument of the protected person in investing the estate, selecting assets of the estate for distribution, and invoking power of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator; and

(15) at termination, deliver any of the estate subject to the conservator's possession, ownership, or control and any records as directed by law or the court.

Section 55. Section **75-5c-411** is enacted to read:

75-5c-411. Title by appointment.

The appointment of a conservator vests title in the conservator as trustee to all property of the protected person, or to the part specified in the order, held at the time of appointment or later acquired. An order vesting title in the conservator to only part of the property of the protected person creates a conservatorship limited to assets specified in the order.

Section 56. Section **75-5c-412** is enacted to read:

75-5c-412. Protected person's interest inalienable.

(1) Except as otherwise provided in Subsections (3) and (4), the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages which may be presented to the conservator.

(2) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed after presentation.

(3) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery of tangible personal property normally transferred by delivery is protected as if the protected person or transferee had valid title.

(4) A third party who deals with the protected person with respect to property vested in a conservator is entitled to any protection provided in other law.

Section 57. Section **75-5c-413** is enacted to read:

75-5c-413. Sale, encumbrance, or other transaction involving conflict of interest.

Any transaction affected by a substantial conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between fiduciary and personal interests includes any sale, encumbrance, or other transaction involving the estate entered into by the conservator, the spouse, descendant, agent, or attorney of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

Section 58. Section **75-5c-414** is enacted to read:

75-5c-414. Protection of person dealing with conservator.

(1) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order is protected as though the conservator properly exercised the authority. A person who knowingly assists or deals with a conservator is not required to inquire into the conservator's authority or the propriety of its exercise, but restrictions on the conservator's authority endorsed on letters of office are effective as to third persons. A person who pays or delivers assets to a conservator is not responsible for their

proper application.

(2) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in the proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

Section 59. Section **75-5c-415** is enacted to read:

75-5c-415. Authority of conservator in administration.

(1) Except as otherwise restricted in the appointment order and endorsed on the letters of office, a conservator has all of the authority granted in this section and any additional authority granted by law to a trustee.

(2) A conservator, acting reasonably and in an effort to accomplish the purpose of the appointment, and without court authorization, may:

(a) collect, hold, and retain estate assets, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;

(b) receive additions to the estate;

(c) continue or participate in the operation of a business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary capacity, holds an undivided interest;

(e) invest estate assets as though the conservator were a trustee;

(f) deposit estate money in a financial institution, including one operated by the conservator;

(g) acquire or dispose of an estate asset, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;

1642 (j) enter for any purpose into a lease as lessor or lessee, with or without option to
1643 purchase or renew, for a term within or extending beyond the term of the conservatorship;
1644 (k) enter into a lease or arrangement for exploration and removal of minerals or other
1645 natural resources or enter into a pooling or unitization agreement;
1646 (l) grant an option involving disposition of an estate asset and take an option for the
1647 acquisition of any asset;
1648 (m) vote a security, in person or by general or limited proxy;
1649 (n) pay calls, assessments, and any other sums chargeable or accruing against or on
1650 account of securities;
1651 (o) sell or exercise stock subscription or conversion rights;
1652 (p) consent, directly or through a committee or other agent, to the reorganization,
1653 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
1654 (q) hold a security in the name of a nominee or in other form without disclosure of the
1655 conservatorship so that title to the security may pass by delivery;
1656 (r) insure estate assets against damage or loss and the conservator against liability with
1657 respect to a third person;
1658 (s) borrow money on behalf of the protected person, with or without security, to be
1659 repaid from the estate or otherwise and advance money for the protection of the estate or the
1660 protected person and for all expenses, losses, and liability sustained in the administration of the
1661 estate or because of the holding or ownership of any assets, for which the conservator has a lien
1662 on the estate as against the protected person for advances so made;
1663 (t) pay or contest any claim, settle a claim by or against the estate or the protected
1664 person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim
1665 belonging to the estate to the extent the claim is uncollectible;
1666 (u) pay taxes, assessments, compensation of the conservator and any guardian, and
1667 other expenses incurred in the collection, care, administration, and protection of the estate;
1668 (v) allocate items of income or expense to income or principal of the estate, as
1669 provided by other law, including creation of reserves out of income for depreciation,
1670 obsolescence, or amortization or for depletion of minerals or other natural resources;
1671 (w) pay any sum distributable to a protected person or to individuals entitled to the
1672 protected person's support by paying the sum to the distributee or by paying the sum for the use

1673 of the distributee:

1674 (i) to the distributee's guardian or custodian under Title 75, Chapter 5a, Uniform
1675 Transfers to Minors Act; or

1676 (ii) if there is no guardian or custodian, to a relative or other person having physical
1677 custody of the distributee;

1678 (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the
1679 protection of estate assets and of the conservator in the performance of fiduciary duties; and

1680 (y) execute and deliver all instruments that will accomplish or facilitate the exercise of
1681 the conservator's authority.

1682 Section 60. Section **75-5c-416** is enacted to read:

1683 **75-5c-416. Delegation.**

1684 (1) A conservator may not delegate to an agent or another conservator the entire
1685 administration of the estate, but a conservator may delegate the performance of functions that a
1686 prudent trustee of comparable skills may delegate under similar circumstances.

1687 (2) The conservator shall exercise reasonable care, skill, and caution in:

1688 (a) selecting an agent;

1689 (b) establishing the scope and terms of a delegation, consistent with the purposes and
1690 terms of the conservatorship;

1691 (c) periodically reviewing an agent's overall performance and compliance with the
1692 terms of the delegation; and

1693 (d) redressing an action or decision of an agent which would constitute a breach of
1694 trust if performed by the conservator.

1695 (3) A conservator who complies with Subsections (1) and (2) is not liable to the
1696 protected person or to the estate for the decisions or actions of the agent to whom a function
1697 was delegated.

1698 (4) In performing a delegated function, an agent shall exercise reasonable care to
1699 comply with the terms of the delegation.

1700 (5) By accepting a delegation from a conservator subject to Utah law, an agent submits
1701 to the jurisdiction of Utah courts.

1702 Section 61. Section **75-5c-417** is enacted to read:

1703 **75-5c-417. Principles of distribution by conservator.**

Unless otherwise specified in the appointment order and endorsed on the letters of office or contrary to the management plan, a conservator may, without further court authorization or confirmation, expend or distribute income or principal of the estate for the support, care, education, health, and welfare of the protected person and individuals entitled to the protected person's support, including the payment of child support or spousal support, under the following rules:

(1) A conservator shall consider a guardian's recommendations about the appropriate standard of support, care, education, health, and welfare for the protected person or individuals entitled to the protected person's support. If the protected person is a minor, the conservator shall consider a parent's recommendations.

(2) A conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefits to a protected person or individuals entitled to the protected person's support under the recommendations of the protected person's parent or guardian, unless the conservator knows that the parent or guardian derives a personal financial benefit, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person.

(3) In making distributions under this Subsection (3), the conservator shall consider:

(a) the size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage business affairs and the estate;

(b) the accustomed standard of living of the protected person and individuals entitled to the protected person's support; and

(c) other money or sources used for the support of the protected person and individuals entitled to the protected person's support.

(4) Money expended under this Subsection (4) may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

Section 62. Section **75-5c-418** is enacted to read:

75-5c-418. Death of protected person.

(1) Upon the death of a protected person, the conservator shall deliver to the court for safekeeping any will of the protected person which may have come into the conservator's possession, inform the personal representative or beneficiary named in the will of the delivery, and retain the estate for delivery to the decedent's personal representative or to another person entitled to it.

(2) Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution to the protected person's successors. The conservator shall file a final report and petition to terminate the conservatorship within 30 days after distribution.

Section 63. Section **75-5c-419** is enacted to read:

75-5c-419. Presentation and allowance of claims.

(1) A conservator may pay, or secure by encumbering estate assets, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance under the priorities stated in Subsection (5). A claimant may present a claim by:

(a) sending or delivering to the conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

(b) filing a written statement of the claim, in a form acceptable to the court, with the court clerk and sending or delivering a copy of the statement to the conservator.

(2) A claim is considered presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court clerk, whichever occurs first.

(3) A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within 60 days after its presentation. Before payment, the conservator may change an allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until 30 days after its disallowance.

(4) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, upon proof, procure an order for its allowance, payment, or security by encumbering estate assets. If a proceeding is pending against a protected person at the time of the conservator's appointment or is later

1766 initiated against the protected person, the moving party shall give to the conservator notice of
1767 any proceeding that could result in creating a claim against the estate.

1768 (5) If it appears that the estate is likely to be exhausted before all existing claims are
1769 paid, the conservator shall distribute the estate in money or in kind in payment of claims in the
1770 following order:

1771 (a) costs and expenses of administration;

1772 (b) claims of the federal or state government having priority under other law;

1773 (c) claims incurred by the conservator for support, care, education, health, and welfare
1774 previously provided to the protected person or individuals entitled to the protected person's
1775 support;

1776 (d) claims arising before the conservatorship; and

1777 (e) all other claims.

1778 (6) Preference may not be given in the payment of a claim over any other claim of the
1779 same class, and a claim due and payable may not be preferred over a claim not due.

1780 (7) If assets of the conservatorship are adequate to meet all existing claims, the court,
1781 acting in the best interest of the protected person, may order the conservator to grant a security
1782 interest in the estate for the payment of any or all claims at a future date.

1783 Section 64. Section **75-5c-420** is enacted to read:

1784 **75-5c-420. Personal liability of conservator.**

1785 (1) Except as otherwise agreed, a conservator is not personally liable on a contract
1786 properly entered into in a fiduciary capacity in the course of administration of the estate unless
1787 the conservator fails to reveal in the contract the representative capacity and identify the estate.

1788 (2) A conservator is not personally liable for obligations arising from possession,
1789 ownership, or control of estate property or for other acts or omissions occurring in the course of
1790 administration of the estate unless the conservator is personally at fault.

1791 (3) Regardless whether the conservator is personally liable, claims based on contracts
1792 entered into by a conservator in a fiduciary capacity, obligations arising from possession,
1793 ownership, or control of the estate, and claims based on torts committed in the course of
1794 administration of the estate may be asserted against the estate by proceeding against the
1795 conservator in a fiduciary capacity.

1796 (4) A question of liability between the estate and the conservator personally may be

1797 determined in a proceeding for accounting, surcharge, or indemnification, or in another
1798 appropriate proceeding or action.

1799 (5) A conservator is not personally liable for any environmental condition on or injury
1800 resulting from any environmental condition on land solely by reason of acquisition of title
1801 under Section 75-5c-411.

1802 Section 65. Section **75-5c-421** is enacted to read:

1803 **75-5c-421. Payment of debt and delivery of property to foreign conservator**
1804 **without local proceeding.**

1805 (1) A person who is indebted to or has the possession of tangible or intangible property
1806 of a protected person may pay the debt or deliver the property to a foreign conservator,
1807 guardian of the estate, or other court-appointed fiduciary of the state in which a protected
1808 person resides.

1809 (2) Payment or delivery may be made only upon proof of appointment and presentation
1810 of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding
1811 relating to the protected person is not pending in this state and the foreign fiduciary is entitled
1812 to payment or to receive delivery.

1813 (3) Payment or delivery under Subsection (1) discharges the debtor or possessor, absent
1814 knowledge of a protective proceeding pending in this state.

1815 Section 66. Section **78B-5-804** is amended to read:

1816 **78B-5-804. Money deposited in court.**

1817 (1) (a) Any person depositing money in court, to be held in trust, shall pay it to the
1818 court clerk.

1819 (b) The clerk shall deposit the money in a court trust fund or with the county treasurer
1820 or city recorder to be held subject to the order of the court.

1821 (2) The Judicial Council shall adopt rules governing the maintenance of court trust
1822 funds and the disposition of interest earnings on those trust funds.

1823 (3) (a) Any interest earned on trust funds in the courts of record that is not required to
1824 accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted
1825 account. Any interest earned on trust funds in the courts not of record that is not required to
1826 accrue to the litigants by Judicial Council rule or court order shall be deposited in the general
1827 fund of the county or municipality.

(b) The Legislature shall appropriate funds from the restricted account of the courts of record to the Judicial Council to:

- (i) offset costs to the courts for collection and maintenance of court trust funds; ~~and~~
- (ii) provide accounting and auditing of all court revenue and trust accounts~~[-]; and~~
- (iii) review or audit annual reports and accounting of guardians and conservators and recruit court visitors in guardianship and conservatorship proceedings.

Section 67. Repealer.

This bill repeals:

Section 75-5-101, Jurisdiction of subject matter -- Consolidation of proceedings.

Section 75-5-102, Facility of payment or delivery.

Section 75-5-103, Delegation of powers by parent or guardian.

Section 75-5-104, Power of court to appoint guardian ad litem not affected.

Section 75-5-105, Bond of guardian.

Section 75-5-201, Status of guardian of minor -- General.

Section 75-5-202, Appointment of guardian of minor.

Section 75-5-202.5, Appointment of guardian by written instrument.

Section 75-5-203, Objection to appointment.

Section 75-5-204, Court appointment of guardian of minor -- Conditions for appointment.

Section 75-5-205, Court appointment of guardian of minor -- Venue.

Section 75-5-206, Court appointment of guardian of minor -- Qualifications -- Priority of minor's nominee.

Section 75-5-207, Court appointment of guardian of minor -- Procedure.

Section 75-5-208, Consent to service by acceptance of appointment -- Notice.

Section 75-5-209, Powers and duties of guardian of minor -- Residual parental rights and duties -- Adoption of a ward.

Section 75-5-210, Termination of appointment of guardian -- General.

Section 75-5-211, Proceedings subsequent to appointment -- Venue.

Section 75-5-212, Resignation or removal proceedings.

Section 75-5-301, Appointment of guardian for incapacitated person.

Section 75-5-302, Venue.

1859 Section **75-5-303, Procedure for court appointment of a guardian of an**
1860 **incapacitated person.**

1861 Section **75-5-304, Findings -- Limited guardianship preferred -- Order of**
1862 **appointment.**

1863 Section **75-5-305, Acceptance of appointment -- Consent to jurisdiction.**

1864 Section **75-5-306, Termination of guardianship for incapacitated person.**

1865 Section **75-5-307, Removal or resignation of guardian -- Termination of incapacity.**

1866 Section **75-5-308, Visitor in guardianship proceeding.**

1867 Section **75-5-309, Notices in guardianship proceedings.**

1868 Section **75-5-310, Temporary guardians.**

1869 Section **75-5-311, Who may be guardian -- Priorities.**

1870 Section **75-5-312, General powers and duties of guardian -- Penalties.**

1871 Section **75-5-313, Proceedings subsequent to appointment -- Venue.**

1872 Section **75-5-316, Expedited guardianship proceedings.**

1873 Section **75-5-401, Protective proceedings.**

1874 Section **75-5-402, Protective proceedings -- Jurisdiction of affairs of protected**
1875 **persons.**

1876 Section **75-5-403, Venue.**

1877 Section **75-5-404, Original petition for appointment or protective order.**

1878 Section **75-5-405, Notice.**

1879 Section **75-5-406, Protective proceedings -- Request for notice -- Interested person.**

1880 Section **75-5-407, Procedure concerning hearing and order on original petition.**

1881 Section **75-5-408, Permissible court orders.**

1882 Section **75-5-409, Protective arrangements and single transactions authorized.**

1883 Section **75-5-410, Who may be appointed conservator -- Priorities.**

1884 Section **75-5-411, Bond.**

1885 Section **75-5-412, Terms and requirements of bonds.**

1886 Section **75-5-413, Acceptance of appointment -- Consent to jurisdiction.**

1887 Section **75-5-414, Compensation and expenses.**

1888 Section **75-5-415, Death, resignation or removal of conservator.**

- 1889 Section **75-5-416, Petitions for orders subsequent to appointment.**
- 1890 Section **75-5-417, General duty of conservator.**
- 1891 Section **75-5-418, Inventory and records.**
- 1892 Section **75-5-419, Accounts.**
- 1893 Section **75-5-420, Conservators -- Title by appointment.**
- 1894 Section **75-5-421, Recording of conservator's letters.**
- 1895 Section **75-5-422, Sale, encumbrance or transaction involving conflict of interest --**
- 1896 **Voidable -- Exceptions.**
- 1897 Section **75-5-423, Persons dealing with conservators -- Protection.**
- 1898 Section **75-5-424, Powers of conservator in administration.**
- 1899 Section **75-5-425, Distributive duties and powers of conservator.**
- 1900 Section **75-5-426, Enlargement or limitation of powers of conservator.**
- 1901 Section **75-5-427, Preservation of estate plan.**
- 1902 Section **75-5-428, Claims against protected person -- Enforcement.**
- 1903 Section **75-5-429, Individual liability of conservator.**
- 1904 Section **75-5-430, Termination of proceeding.**
- 1905 Section **75-5-431, Payment of debt and delivery of property to foreign conservator**
- 1906 **without local proceedings.**
- 1907 Section **75-5-432, Foreign conservator -- Proof of authority -- Bond -- Powers.**
- 1908 Section **75-5-433, Embezzlement of protected person's estate -- Citation to person**
- 1909 **suspected.**
- 1910 Section 68. **Effective date.**
- 1911 This bill takes effect on July 1, 2011.